In the High Court of Punjab and Haryana at Chandigarh

I.T.R. No. 71 of 1990

Date of Decision: 14.03.2007

The Commissioner of Income-Tax, Jalandhar

…Petitioner

Versus

M/s R.V. Steel Rolling Mills, Jaitu

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjeev Bansal, Advocate,
for the petitioner-revenue.

JUDGMENT

M.M. KUMAR, J.

On the direction issued by this Court in Income Tax Case No. 32 of 1985, as well as the order dated 31.8.1984, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in I.T.A. No. 645 (CHANDI)/1983, in respect of assessment year 1977-78, the revenue has referred the following question of law for the opinion of this Court:-

> "Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that there is no mistake apparent from record within the meaning of section 154 of the Income-tax Act, 1961, when the

retrospective amendment of section 80J of Income-tax Act, is challenged before the Supreme Court?"

As per the statement of the case forwarded by the Tribunal, the assessee is a firm engaged in the business of steel re-rolling. For the assessment year 1977-78, the assessee filed his return on 30.9.1977, which was revised on 23.12.1979. On 2.5.1980, the Assessing Officer completed the assessment under Section 143(3) of the Act and allowed deduction under Section 80J at Rs. 1,03,045/- as claimed by the assessee. The Income Tax Officer re-opened the issue of admissibility of deduction under Section 80J of the Act when Section 80J was amended by the Finance (No. 2) Act, 1980 with retrospective effect from 1.4.1972 and after affording an opportunity of hearing, the Assessing Officer passed an order under Section 154 reducing the deduction under Section 80J from 1,03,045/- to Rs. 10,155/-. The Assessing Officer reduced the amount from the aggregate value of the assets for working out the capital employed in the industrial undertaking as per sub-section (1A) of Section 80J in terms of retrospective operation of the amendment. The order was carried in appeal before the Assistant Commissioner, who dismissed the appeal on 25.7.1983 (Annexure 'B'). Thereafter the order was carried in appeal before the Tribunal. The appeal was allowed by accepting the argument of the assessee holding that the Assessing Officer could not re-open the assessment under Section 154 because there was no error apparent on the record. The view of the Tribunal is evident from perusal of para 3, which reads as under:-

> "3. In our view, the plea taken by the assessee before the AAC is quite sound. It cannot be said that there is mistake apperant (apparent?) from record within the meanings of section 154 of the Income Tax Act, when the retrospective amendment of section 80-J is in challenge before the Supreme Court. Without the retrospective amendment the ITO could not withdraw the relief allowed at the original assessment stage in respect of section 80-J deduction. There is clearly a doubt existing whether the amended section 80-J by the Finance (No. 2), Act, 1980, could be held to be applicable for the assessment year 1977-78. This being so, we accept the assessee's contention and hold that ITO was not justified in reducing the amount of deduction allowed under section 80-J at the original assessment stage u/s 154. His action in reducing that amount to Rs. 10,155/- is reversed and therefore the position as at the original assessment stage will stand."

After hearing learned counsel for the revenue, we are of the view that the question posed has to be answered against the revenue and in favour of the assessee because it could not be disputed before us that power under Section 154 of the Act could be exercised only in case there is an error apparent on record and there are no two

opinions possible on the issue. The section having been amended retrospectively and the amendment being under challenge before Hon'ble the Supreme Court, in our view the power under these circumstances could not be exercised under Section 154 of the Act. The reference is, accordingly, answered against the revenue and in favour of the assessee.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

March 14, 2007
Pkapoor